

### ***REMARKS***

In response to the Examiner's restriction requirement, Applicant has provisionally selected Invention I with traverse. Applicant submits that claims 1-20 all read on the same invention. **The claims remaining in consideration are claims 1-16.** Claims 1, 10, 11, 14, and 16 are the independent claims remaining under consideration.

#### ***I. Restriction Requirement***

The Examiner has issued a restriction requirement, identifying method claims 1-9 and 14-16 as Invention I and product claims 10-13 as Invention II, on the basis that the claimed product can be used in a materially different process than the process claimed. Specifically, the Examiner asserts that the "the solution of botulinum toxin can be used for the treatment of pain (U.S. Patent 6,113,915)." Applicant respectfully requests reconsideration of this restriction.

The patent cited by the Examiner does indeed describe the use of botulinum toxin for the treatment of pain. However, the cited reference describes the intrathecal or intraspinal administration of botulinum toxin for the treatment of pain, not transdermal application. Significantly, the products claimed by Applicant are specific to transdermal application of botulinum toxin. The Examiner has not identified any reference that describes that transdermal application of botulinum toxin is effective for "treatment of pain". In addition, Applicant notes that, as the Examiner has acknowledged, the method and product claims are both classified in class 424, subclass 236.1 and class 530, subclass 350, which suggests that the identified inventions have not acquired separate status in the art. Therefore, the Applicant respectfully requests reconsideration of the restriction requirement.

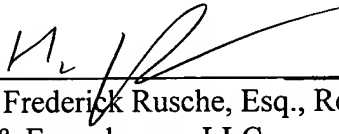
#### ***II. Conclusion***

It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. If the Examiner

believes, for any reason, that personal communication will expedite prosecution of this application, he is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Response is respectfully requested.

Respectfully submitted,



By: H. Frederick Rusche, Esq., Reg. No. 45,061  
Husch & Eppenger, LLC  
190 Carondelet Plaza, Suite 600  
St. Louis, MO 63105  
314-480-1500  
314-480-1505 FAX